

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 660, AS REPORTED
OFFERED BY MR. KIND OF WISCONSIN AND MR.
ANDREWS OF NEW JERSEY
(Small Employer Health Benefits Plan)

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Small Employer Health Benefits Program Act of 2003”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Establishment of Small Employer Health Benefits Program (SEHBP).

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM

“Sec. 801. Establishment of program.

“Sec. 802. Contracts with qualifying insurers.

“Sec. 803. Additional conditions.

“Sec. 804. Dissemination of information.

“Sec. 805. Subsidies.

“Sec. 806. Authorization of appropriations.

6 SEC. 2. ESTABLISHMENT OF SMALL EMPLOYER HEALTH
7 BENEFITS PROGRAM (SEHBP).

8 (a) IN GENERAL.—Subtitle B of title I of the Em-
9 ployee Retirement Income Security Act of 1974 is amend-
10 ed by adding after part 7 the following new part:

1 “PART 8—SMALL EMPLOYER HEALTH BENEFITS

2 PROGRAM (SEHBP)

3 "SEC. 801. ESTABLISHMENT OF PROGRAM.

4 “(a) IN GENERAL.—The Secretary shall establish, in
5 accordance with this part, a program under which—

6 “(1) qualifying small employers (as defined in
7 subsection (b)) are provided access to qualifying
8 health insurance coverage (as defined in subsection
9 (c)) for their employees, and

10 “(2) such employees may elect alternative forms
11 of coverage offered by various health insurance
12 issuers.

13 “(b) QUALIFYING SMALL EMPLOYER DEFINED;
14 OTHER DEFINITIONS.—For purposes of this part:

15 “(1) QUALIFYING SMALL EMPLOYER.—

16 “(A) IN GENERAL.—The term ‘qualifying
17 small employer’ means a small employer (as de-
18 fined in paragraph (2)) that—

19 “(i) elects to offer health insurance
20 coverage provided under this part to each
21 employee who has been employed by that
22 employer for 3 months or longer; and

23 “(ii) elects, with respect to an em-
24 ployee electing coverage under qualified
25 health insurance coverage, to pay at least

1 50 percent of the total premium for quali-
2 fying health insurance coverage provided
3 under this part.

4 “(B) ELECTIONS.—Elections under sub-
5 paragraph (A) may be filed with the Secretary
6 during the 180-day period beginning with the
7 first enrollment period occurring under section
8 803 and during open enrollment periods occur-
9 ring thereafter under such section. Such elec-
10 tions shall be filed in such form and manner as
11 shall be prescribed by the Secretary.

12 “(C) PART-TIME EMPLOYMENT.—Under
13 regulations of the Secretary, in the case of an
14 employee serving in a position in which service
15 is customarily less than 1,500 hours per year,
16 the reference in subparagraph (A)(ii) to ‘50
17 percent’ shall be deemed a percentage reduced
18 to a percentage that bears the same ratio to 50
19 percent as the number of hours of service per
20 year customarily in such position bears to
21 1,500.

22 “(2) SMALL EMPLOYER.—The term ‘small em-
23 ployer’ means, with respect to a year, an employer
24 who employed an average of fewer than 100 employ-
25 ees on business days during the preceding calendar

1 year and who employs at least 2 employees on the
2 first day of the year.

3 “(3) SEHBP.—The term ‘SEHBP’ means the
4 small employer health benefits program provided
5 under this part.

6 “(c) QUALIFYING HEALTH INSURANCE COVERAGE.—
7 For purposes of this part, the term ‘qualifying health in-
8 surance coverage’ means health insurance coverage that
9 meets the following requirements:

10 “(1) The coverage is offered by a health insur-
11 ance issuer.

12 “(2) The benefits under such coverage are
13 equivalent to or greater than the lower level of bene-
14 fits provided under the service benefit plan described
15 in section 8903(1) of title 5, United States Code.

16 “(3) The coverage includes, with respect to an
17 employee that elects coverage, coverage of the same
18 dependents that would be covered if the coverage
19 were offered under FEHBP.

20 “(4)(A) Subject to subparagraph (B), there is
21 no underwriting, through a preexisting condition
22 limitation, differential benefits, or different premium
23 levels, or otherwise, with respect to such coverage for
24 covered employees or their dependents.

1 “(B) The premiums charged for such coverage
2 are community-rated for employees within any State
3 and may vary only—

4 “(i) by individual or family enrollment, and
5 “(ii) to the extent permitted under the
6 laws of such State relating to health insurance
7 coverage offered in the small group market, on
8 the basis of geography.

9 “(d) OTHER TERMS.—

10 “(1) HEALTH INSURANCE COVERAGE; HEALTH
11 INSURANCE ISSUER; HEALTH STATUS-RELATED FAC-
12 TOR.—The terms ‘health insurance coverage’, ‘health
13 insurance issuer’, ‘health status-related factor’ have
14 the meanings provided such terms in section 733.

15 “(2) SMALL GROUP MARKET.—The term ‘small
16 group market’ has the meaning provided such term
17 in section 2791(e)(5) of the Public Health Service
18 Act (42 U.S.C. 300gg–91(e)(5)).

19 “(3) FEHBP.—The term ‘FEHBP’ means the
20 Federal Employees Health Benefits Program under
21 chapter 89 of title 5, United States Code.

22 **“SEC. 802. CONTRACTS WITH QUALIFYING INSURERS.**

23 “(a) IN GENERAL.—The Secretary shall enter into
24 contracts with health insurance issuers for the offering of
25 qualifying health insurance coverage under this part in the

1 States in such manner as to offer coverage to employees
2 of employers that elect to offer coverage under this part.
3 Nothing in this part shall be construed as requiring the
4 Secretary to enter into arrangements with all such issuers
5 seeking to offer qualifying health insurance coverage in
6 a State.

7 “(b) CONTINUED REGULATION.—Nothing in this
8 part shall be construed as preempting State laws applica-
9 ble to health insurance issuers that offer coverage under
10 this part in such State.

11 “(c) COORDINATION WITH STATE INSURANCE COM-
12 MISSIONERS.—The Secretary shall coordinate with the in-
13 surance commissioners for the various States in estab-
14 lishing a process for handling and resolving any com-
15 plaints relating to health insurance coverage offered under
16 this part, to the extent necessary to augment processes
17 otherwise available under State law.

18 **“SEC. 803. ADDITIONAL CONDITIONS.**

19 “(a) LIMITATION ON ENROLLMENT PERIODS.—The
20 Secretary may limit the periods of times during which em-
21 ployees may elect coverage offered under this part, but
22 such election shall be consistent with the elections per-
23 mitted for employees under FEHBP and shall provide for
24 at least annual open enrollment periods and enrollment

1 at the time of initial eligibility to enroll and upon appro-
2 priate changes in family circumstances.

3 “(b) AUTHORIZING USE OF STATES IN MAKING AR-
4 RANGEMENTS FOR COVERAGE.—In lieu of the coverage
5 otherwise arranged by the Secretary under this part, the
6 Secretary may enter an arrangement with a State under
7 which a State arranges for the provision of qualifying
8 health insurance coverage to qualifying small employers
9 in such manner as the Secretary would otherwise arrange
10 for such coverage.

11 “(c) USE OF FEHBP MODEL.—The Secretary shall
12 carry out the SEHBP using the model of the FEHBP
13 to the extent practicable and consistent with the provisions
14 of this part, and, in carrying out such model, the Secretary
15 shall, to the maximum extent practicable, negotiate the
16 most affordable and substantial coverage possible for
17 small employers.

18 **“SEC. 804. DISSEMINATION OF INFORMATION.**

19 “The Secretary shall widely disseminate information
20 about SEHBP through the media, the Internet, public
21 service announcements, and other employer and employee
22 directed communications.

23 **“SEC. 805. SUBSIDIES.**

24 “(a) EMPLOYER SUBSIDIES.—

25 “(1) ENROLLMENT DISCOUNT.—

1 “(A) IN GENERAL.—In the case of a quali-
2 fying small employer who is eligible under sub-
3 paragraph (B), the portion of the total pre-
4 mium for coverage otherwise payable by such
5 employer under this part shall be reduced by 5
6 percent. Such reduction shall not cause an in-
7 crease in the portion of the total premium pay-
8 able by employees.

9 “(B) EMPLOYERS ELIGIBLE FOR DIS-
10 COUNTS.—A qualifying small employer is eligi-
11 ble under this subparagraph if such employer
12 employed an average of fewer than 25 employ-
13 ees on business days during the preceding cal-
14 endar year.

15 “(2) EMPLOYER PREMIUM SUBSIDY.—

16 “(A) IN GENERAL.—The Secretary shall
17 provide to qualifying small employers who are
18 eligible under subparagraph (C) and who elect
19 to offer health insurance coverage under this
20 part a subsidy for premiums paid by the em-
21 ployer for coverage of employees whose indi-
22 vidual income (as determined by the Secretary)
23 is at or below 200 percent of the poverty line
24 (as defined in section 673(2) of the Community
25 Services Block Grant Act (42 U.S.C. 9902(2)),

1 including any revision required by such section)
2 for an individual.

3 “(B) SUBSIDY SCALED ACCORDING TO
4 SIZE OF EMPLOYER.—The subsidy provided
5 under subparagraph (A) shall be designed so
6 that the subsidy equals, for any calendar year—

7 “(i) 50 percent of the portion of the
8 premium payable by the employer for the
9 coverage, in the case of eligible qualifying
10 small employers who employ an average of
11 fewer than 11 employees on business days
12 during the preceding calendar year;

13 “(ii) 35 percent of the portion of the
14 premium payable by the employer for the
15 coverage, in the case of eligible qualifying
16 small employers who employ an average of
17 more than 10 employees but fewer than 26
18 employees on business days during the pre-
19 ceding calendar year; and

20 “(iii) 25 percent of the portion of the
21 premium payable by the employer for the
22 coverage, in the case of eligible qualifying
23 small employers who employ an average of
24 more than 25 employees but fewer than 51

1 employees on business days during the pre-
2 ceding calendar year.

3 “(C) EMPLOYERS ELIGIBLE FOR PREMIUM
4 SUBSIDY.—A qualifying small employer is eligi-
5 ble under this subparagraph if such employer
6 employed an average of fewer than 50 employ-
7 ees on business days during the preceding cal-
8 endar year.

9 “(b) EMPLOYEE SUBSIDIES.—

10 “(1) IN GENERAL.—The Secretary shall provide
11 subsidies to employees whose family income (as de-
12 termined by the Secretary) is at or below 200 per-
13 cent of the poverty line (as defined in section 673(2)
14 of the Community Services Block Grant Act (42
15 U.S.C. 9902(2)), including any revision required by
16 such section) for a family of the size involved.

17 “(2) AMOUNT OF SUBSIDY.—Such subsidies
18 shall be in an amount equal to the excess of the por-
19 tion of the total premium for coverage otherwise
20 payable by the employee under this part for any pe-
21 riod, over 5 percent of the family income (as deter-
22 mined under paragraph (1)(A)) of the employee for
23 such period.

24 “(3) COORDINATION OF SUBSIDIES.—Notwith-
25 standing paragraph (1), under regulations of the

1 year 2014, \$50,000,000,000 to carry out this part, includ-
2 ing the establishment of subsidies under section 805.”.

3 (b) REPORT ON OFFERING NATIONAL HEALTH
4 PLANS.—Not later than 18 months after the date of the
5 enactment of this Act, the Secretary of Labor shall report
6 to Congress the Secretary’s recommendations regarding
7 the feasibility of offering national health plans under part
8 8 of subtitle B of title I of the Employee Retirement In-
9 come Security Act of 1974, as added by subsection (a).

10 (c) CLERICAL AMENDMENT.—The table of contents
11 in section 1 of the Employee Retirement Income Security
12 Act of 1974 is amended by inserting after the item relat-
13 ing to section 734 the following new items:

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

“Sec. 801. Establishment of program.

“Sec. 802. Contracts with qualifying insurers.

“Sec. 803. Additional conditions.

“Sec. 804. Dissemination of information.

“Sec. 805. Subsidies.

“Sec. 806. Authorization of appropriations.”.

Amend the title so as to read: “A Bill to provide for
the establishment in the Department of Labor of a Small
Employer Health Benefits Program.”.